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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,559	03/25/2004	Tetsunori Kaji	520.35237CV4	4764

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EXAMINER

CROWELL, ANNA M

ART UNIT PAPER NUMBER

1763

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,559

Applicant(s)

KAJI ET AL.

Examiner

Michelle Crowell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006 and 02 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-25,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-25,27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/808805.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06-02-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 12, 2006 has been entered.

Status of Claims

Claims 8-25, 27, and 28 are pending in the application. Claims 8-25, 27, and 28 are rejected.

Election/Restrictions

1a. Applicant's election without traverse of claims 1-25 in the reply filed on February 17, 2006 is acknowledged.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 8, 13, 16, 19, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenz et al. (U.S. 5,534,751) in view of Ohmi (U.S. 5,272,417) and Lenz et al. (U.S. 5,569,356).

Referring to Figures 1 and 2, column 4, line 48-column 6, line 65, Lenz et al. discloses a plasma processing apparatus comprising: a vacuum processing chamber 17 for processing a sample, by using plasma, an outer chamber 11 connected with an evacuation means (col. 4, lines 53-54, col. 5, lines 4-5), a gas supplying unit for introducing into the vacuum processing chamber a processing gas (col. 5, lines 1-4); an upper electrode 14 and a lower electrode 13 for generating plasma therebetween and providing the vacuum processing chamber (col. 4, lines 60-63); a discharge confining means 30 surrounding the vacuum processing chamber 17 (col. 6, lines 8-29, specifically, col. 6, lines 16-18).

Lenz et al. fails to teach the electrode cover is comprised and made of silicon.

Referring to column 6, lines 33-43, Ohmi teaches an electrode cover 101 comprised and made of silicon. The electrode cover 101 prevents etching of the electrode 102. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide one of the electrodes of Lenz et al. with the an electrode cover as taught by Ohmi in order to prevent etching of the electrode.

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Lenz et al.'751 fails to teach the discharge confining means is made of SiC.

Referring to Figures 2 and 3, column 5, line 3-column 6, line 10, Lenz et al.'356 teaches a plasma processing apparatus which uses a discharge confining means 34 made of SiC since the material is stable in a plasma environment (col. 2, lines 25-29, col. 5, lines 13-16, 54-64).

Additionally, the motivation for making the discharge confining means out of SiC is to provide an alternate material of construction that would limit the contamination caused by the interaction of plasma. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention for the discharge confining means of Lenz et al.'751 to be made of SiC as taught by Lenz et al.'356 since it is an alternate material of construction that would limit the contamination caused by the interaction of plasma.

Regarding the limitation of "fluorine-containing etching gas", the type of gas used in apparatus claims is considered intended use and therefore is of no significance in determining patentability. Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Additionally, Ohmi teaches that a fluorine containing gas is conventionally used for etching a film (col. 6, lines 29-33). Thus, the apparatus of Lenz et al. in view of Ohmi is capable of providing a fluorine containing gas to the chamber.

Regarding the limitation of "an insulator film in the sample", this is considered intended use and therefore is of no significance in determining patentability. The inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In *re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963). Moreover, the apparatus of Lenz et al. in view of Ohmi is

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capable of processing various types of films (Lenz et al., col. 6, lines 3-7, Ohmi, col. 12, lines 12-15) and thus is capable of processing an insulator film on the sample.

With respect to claims 13 and 24, the apparatus of Lenz et al. further includes that the discharge confining means 30 is ring-shaped (Fig. 2, and col. 5, lines 56-59).

With respect to claims 16 and 25, the apparatus of Lenz et al. further includes that the discharge confining means is provided with at least a gap for evacuating the processing gas from the vacuum chamber 17 to the outer chamber 12 (col. 6, lines 30-34).

4. Claims 9-12, 14-15, 17-18, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenz et al. (U.S. 5,534,751) in view of Ohmi (U.S. 5,272,417) and Lenz et al. (U.S. 5,569,356) as applied to claims 8, 13, 16, 19, 24, and 25 above, and further in view of Steger et al. (U.S. 5,494,523) or Ogasawara et al. (J.P. 07-135200).

The teachings of Lenz et al. in view of Ohmi and Lenz et al.'356 have been discussed above.

Lenz et al. in view of Ohmi and Lenz et al.'356 fail to teach a susceptible cover comprised and made of silicon.

Referring to column 3, lines 39-42, and column 4, line 64-column 5, line 25 of Steger et al. and the abstract of, Steger et al. or Ogasawara et al. teaches it is conventionally known in the art to provide a sample mounting surface with a susceptible cover comprised of silicon in order to reduce particle trapping and to improve process uniformity. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the sample mounting surface of Lenz et al. in view of Ohmi and Lenz et al.'356 with the susceptible cover comprised

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and made of silicon as taught by Steger et al. or Ogasawara et al. since this would reduce particle trapping and improve process uniformity.

With respect to a high frequency electric power source, Lenz et al. further includes a high frequency electric power source 24 for generating plasma between upper 14 and lower 13 electrodes (Fig. 1, col. 5, lines 11-20)

With respect to a bias electric power source, Lenz et al. further includes a bias electric power source 23 to control the energy of ions in the plasma (Fig1., col. 5, lines 16-20, 34-38).

5. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenz et al. (U.S. 5,534,751) in view of Ohmi (U.S. 5,272,417), Lenz et al. (U.S. 5,569,356), Steger et al. (U.S. 5,494,523) or Ogasawara et al. (J.P. 07-135200) as applied to claims 9-12, 14-15, 17-18, and 20-23 above, and further in view of Koshiishi et al. (U.S. 5,919,332) and Lenz et al. (U.S. 5,609,720).

The teachings of Lenz et al. in view of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.) have been discussed above.

Lenz et al. in view of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.) fail to teach a plasma density of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ between the upper electrode and lower electrode to etch a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more.

Referring to column 13, lines 14-17, Koshiishi et al. teach a plasma density of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ between the upper electrode and lower electrode in order to perform fine etching with a high etching rate (col. 6, lines 10-20). Thus, it would have been

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obvious to one of ordinary skill in the art at the time of the invention for the plasma density of Lenz et al. in view of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.) to be $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ as taught by Koshiishi et al. in order to perform fine etching with a high etching rate.

Referring to column 2, lines 35-41, Lenz et al.'720 teach that it is conventionally known in the art to process a wafer having a diameter of 300 mm. Thus, it would have been obvious to scale up the apparatus including the table in Lenz et al.'751 in view of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.) in order to process a wafer having a diameter of 300 mm since it is conventionally known in the art to process wafers having a diameter of 300 mm.

Additionally, according to *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to scale up/down the apparatus including the table of in Lenz et al.'751 in view of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.) in order to process a sample with a diameter of 300 mm or more and additionally the motivation for optimizing the size of the table is to enable the table to hold the desired size of substrate.

With respect to the “to etch a fine pattern of $0.2 \mu\text{m}$ or smaller on the sample having a diameter of 300 mm or more”, this limitation is considered a process limitation. The apparatus of Ohmi, Lenz et al.'356, and (Steger et al., or Ogasawara et al.), Koshiishi et al., and Lenz et

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al.'751 disclose a plasma density of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ and thus the apparatus is capable of being used to produce such a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more by simply optimizing the power, pressure, and electrode spacing. Furthermore, apparatus claims cover what a device is, not what a device does.

Response to Arguments

6. Applicant's arguments with respect to claims 8-25, 27, and 28 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Crowell whose telephone number is (571) 272-1432. The examiner can normally be reached on M-F (9:30 -6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on (571) 272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner
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